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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ADRIAN VAN ANZ,

Plaintiff and Appellant,

v.

KIMI OZAWA,

Defendant and Respondent.

B283545

(Los Angeles County
Super. Ct. No. BC578952)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lia R. Martin, Judge. Affirmed.

Khorshidi Law Firm, Omid Khorshidi and Robert L. Bastian, Jr., for Plaintiff and Appellant.

Belofsky & Hanker and David A Belofsky for Defendant and Respondent.

Adrian Van Anz (Van Anz) suffered injuries when a car being driven by Kimi Ozawa (Ozawa) rear-ended his motorcycle. Van Anz sued Ozawa and after a jury trial, the jury returned a verdict in favor of Van Anz. After the trial court entered judgment in his favor, Van Anz filed a motion to modify the verdict, or, in the alternative, an order for a new trial on the issue of damages only. The trial court denied the motion and Van Anz appealed. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2013, while Ozawa was driving her car, she rear-ended Van Anz on his motorcycle. The accident caused Van Anz to be thrown back and forward on his motorcycle, striking his tailbone on the seat and his arms and shoulders on the handlebars. The accident did not cause Van Anz to fall to the ground or knock over his motorcycle. The accident did, however, cause Van Anz's motorcycle to become embedded into the grill of Ozawa's car.

After the accident, Van Anz got off his motorcycle and began yelling at Ozawa. At some point shortly thereafter, Van Anz and Ozawa discovered that they had mutual friends. Ozawa called the police to report the accident and they asked Ozawa whether anyone had been injured and would require an ambulance. Van Anz told Ozawa that he was not injured. Van Anz attempted to pull his motorcycle free from the front of Ozawa's car before dragging it to the side of the road. Van Anz did not seek medical treatment immediately after the accident, but instead, had lunch with a friend with whom he had planned to meet that day.

Approximately two days later, Van Anz sought treatment at an urgent care facility. At urgent care, Van Anz complained

that he was experiencing headaches and had some back pain, but he did not complain of ankle, foot or toe pain. Within one year after the accident, Van Anz received additional treatment and saw several medical practitioners, including a podiatrist, Payam B. Nikraves, M.D., (Dr. Nikraves). From approximately June 2014 to December 2016, Van Anz was not seen by any medical practitioner. Within this approximately two and a half year gap in treatment, Van Anz worked out at the gym approximately three times per week; continued to work as a photographer for real estate listings; rode his bicycle on average twice per week for 30 to 40 miles and took various trips.

At trial, in support of her contentions regarding Van Anz's past and future medical expenses, Ozawa submitted the expert testimony of Scott Forman, M.D., (Dr. Forman). After itemizing the value of each of Van Anz's past medical examinations and taking into consideration that a number of Van Anz's treatments were done on a lien basis, Dr. Forman concluded that the reasonable cost of Van Anz's past medical expenses was \$14,760. Regarding Van Anz's future medical expenses, Dr. Forman testified that Van Anz would need to undergo a tarsal tunnel release procedure on his left foot. Dr. Forman testified that this procedure would take approximately 30 minutes, could be done on an outpatient basis, and would cost \$15,500, including the costs of post-op and rehabilitation. He also testified that the success rate of a left tarsal tunnel release was approximately 85 to 90 percent and thus it was very unlikely that Van Anz would require additional surgeries.

Dr. Forman's testimony directly conflicted with the testimony of Van Anz's expert, Dr. Nikraves, who testified that the procedure had a 30 percent success rate and thus Van Anz

would likely need multiple revision surgeries. Dr. Forman disputed this testimony, explaining that it was founded on outdated medical data. Dr. Forman also testified that, after reviewing Van Anz's medical records and test results, he disagreed with Dr. Nikraves's opinion that Van Anz would require additional surgery on his right foot as a result of the accident or that Van Anz was likely to develop complex pain syndrome.

On March 20, 2017, after deliberating for 3 hours and 15 minutes, the jury unanimously returned its verdict awarding Van Anz \$60,400 in damages. The jury awarded Van Anz \$15,400 for past economic damages; \$20,000 for future economic damages; \$20,000 for past pain and suffering; and \$5,000 for future pain and suffering. On April 17, 2017, the trial court entered judgment in favor of Van Anz.

On May 11, 2017, Van Anz moved for an order modifying the verdict, or, in the alternative, for an order for a new trial on the issue of damages because: (1) the damages awarded by the jury were inadequate, (2) the evidence did not justify the damages verdict, (3) the verdict was contrary to law, and (4) there were irregularities in the jury proceedings. Van Anz requested an additur of \$1,111,240.21 for future economic damages; \$32,195.08 for past economic damages; \$247,680 for past pain and suffering; and \$755,550 for future pain and suffering.

On June 6, 2017, the trial court denied the motion. At the outset, the trial court dismissed Van Anz's contention that any irregularities occurred during jury proceedings because he did not submit the requisite affidavits to support his argument. Next, the trial court addressed whether the evidence was

insufficient to justify the verdict and whether the damage award was inadequate. The trial court noted that the issue of damages was essentially a dispute between conflicting expert testimony. The trial court addressed the experts' backgrounds and training, finding both sides credible, but that ultimately, the jury sided with Ozawa. The trial court discussed the parties' experts' testimony and concluded that the jury did not accept the testimony of Dr. Nikraves. It noted that the jury had been instructed that it was not required to accept an expert's testimony outright.

The trial court stated: "After weighing the evidence from the entire record, this court cannot say that the jury 'clearly should have reached a different verdict.' Given the jury's award of \$35,400 for total economic loss, and the facts that justify an award in that amount, the jury's award of \$25,000 for total non-economic loss is not clearly wrong. The award reflects the jury's finding that [Van Anz] was harmed as a result of . . . Ozawa's negligence, that he has suffered pain and mental anguish in the past and will experience some additional pain and suffering during the weeks of physical therapy he will undergo after he has the four-tunnel release procedure performed."¹

On June 30, 2017, Van Anz filed this timely appeal.

¹ The trial court also addressed a dispute over the time allotted to Van Anz's counsel during closing arguments. This issue was not raised in Van Anz's opening brief and we do not address it here.

DISCUSSION

I. Standard of Review

A judgment is presumed correct (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564) and we review a ruling on a motion for new trial for abuse of discretion. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871–872.) “An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice.” (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1415 (*Rayii*)). On a motion for new trial based on inadequate damages, the trial court “sits as a thirteenth juror with the power to weigh the evidence and judge the credibility of the witnesses.’” (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 507.) The trial court has a duty to reweigh the evidence and to “grant a new trial when . . . [it finds] the weight of the evidence to be contrary to the finding of the jury.” (*Tice v. Kaiser Co.* (1951) 102 Cal.App.2d 44, 46.)

On appeal, we can reverse the denial of a new trial motion based on insufficiency of the evidence or inadequate damages “only if there is no substantial conflict in the evidence and the evidence compels the conclusion that the motion should have been granted.” (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 752.) We view “the facts on the issue of damage[s] most favorable to the respondent.” (*Miller v. San Diego Gas & Elec. Co.* (1963) 212 Cal.App.2d 555, 559.) “An appellant challenging the sufficiency of the evidence to support the judgment must cite the evidence in the record supporting the judgment and explain why such evidence is insufficient as a matter of law.” (*Rayii, supra*, 218 Cal.App.4th at p. 1408.) An appellant cannot rely solely on

favorable evidence that supports a judgment in its favor, but rather, the appellant must attack the evidence supporting the judgment or lack thereof to demonstrate that it cannot support the verdict. (*Ibid.*)

II. Analysis

A. *Future economic damages*

Van Anz contends the award of only \$20,000 in future economic damages is inadequate in light of the evidence of his need for future medical care. In his motion and his opening brief, Van Anz failed to show why Ozawa's evidence on this issue was insufficient or how the trial court abused its discretion when it denied his motion for a new trial.

Ozawa presented evidence that treatment of Van Anz's injuries would require one surgery on his left foot, which could be done on an outpatient basis. This testimony conflicted with the testimony of Dr. Nikravesh, who opined that Van Anz would likely require multiple revision surgeries and other lifelong medical treatments as a result of his injuries. As the trial court discussed in its order denying Van Anz's motion, this was a battle of credible experts that was decided in Ozawa's favor. Before it made its ruling, the trial court reconsidered the entire record and discussed why the evidence supported the verdict. We cannot say that the trial court's ruling exceeded the bounds of reason or was a miscarriage of justice. (*Rayii, supra*, 218 Cal.App.4th at p. 1415.) There is substantial evidence to support the decision and Van Anz has not established that "the [trial] court or jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657, subd. (7).)

B. *Past economic damages*

Similarly, Van Anz contends the award of \$15,400 for his past medical expenses was inadequate. “To be recoverable, a medical expense must be both incurred and reasonable.” (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 555.) “[I]nitial medical bills are generally insufficient on their own as a basis for determining the reasonable value of medical services . . . cases have held that a plaintiff who relies solely on evidence of unpaid medical charges will not meet his burden of proving the reasonable value of medical damages with substantial evidence.” (*Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311, 1335.) Dr. Forman opined that the reasonable value of Van Anz’s past medical expenses was \$14,760. He based his opinion on his experience and itemizations of Van Anz’s past treatments, considering the fact that the charges of some of Van Anz’s treatments may not reflect their reasonable cost because they were obtained on a lien basis. Once again, this dispute boiled down to the resolution of conflicting, but credible, expert testimony. Van Anz has not shown why Ozawa’s evidence was insufficient or how the trial court abused its discretion in denying his motion.

C. *Past and future noneconomic damages*

Van Anz contends the awards of only \$20,000 for past pain and suffering and \$5,000 for future pain and suffering are inadequate in light of the evidence. The amount of noneconomic damages to award for pain and suffering is a subjective determination that is particularly within the jury’s discretion. (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892–893.)

Van Anz contends that the evidence of his pain and suffering was never refuted by Ozawa. The record does not support this contention. Ozawa presented evidence of Van Anz's post-accident behavior which included working out regularly at the gym, continuing to work as a photographer, traveling throughout the country, and riding his bicycle multiple times per week for significant distances. The record also reflects that Van Anz did experience some pain and suffering and was awarded past noneconomic damages. This is not a case where the jury awarded nominal damages for pain and suffering when there was undisputed evidence to the contrary. (See, e.g., *Haskins v. Holmes* (1967) 252 Cal.App.2d 580, 587.) On Van Anz's motion for a new trial, the trial court found that the award was in line with the jury's finding that Van Anz "suffered pain and mental anguish in the past and will experience some additional pain and suffering during the weeks of physical therapy he will undergo after he has the four-tunnel release procedure performed." Van Anz has not established that the verdict was incorrect as a matter of law or that the trial court abused its discretion when it denied his motion for a new trial on damages.

DISPOSITION

The judgment is affirmed. Kimi Ozawa is awarded her costs on appeal.

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DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.